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No. 71

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In The
Supreme Court of the United States

OCTOBER TERM, 1968

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah, *Petitioners,*

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, *Respondent,*

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah, *Petitioners,*

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees, *Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

~~MOTION FOR LEAVE TO FILE~~ BRIEF AMICI CURIAE IN BEHALF OF RESPONDENTS WITH BRIEF AMICI CURIAE ATTACHED

ALFRED J. SCHWEPPE
Attorney for the Movants.

657 Colman Building
Seattle, Washington 98104

THE ARGUS PRESS SEATTLE, WASHINGTON

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With the consent of all counsel, the Laurelhurst Presbyterian Church, Inc., a non-profit Washington corporation, its pastor, James R. Rohrbaugh, Allen Prier, Chairman of the Board of Trustees and representing all other Trustees similarly situated, and Ralph Schreiner, R. W. Sprague, S. R. Hansen, C. W. Gibbs, R. T. Downs, Jerry Journey, Earl R. McMillan, Frank Johnson, Karl House, Arnold J. Carlson, Dr. Doo Soo Suh, Phil Gallaher, Dr. Kirk Douglas, Glen Carson and Ewart Suffel, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated, hereby respectfully move for leave to file a brief *amici curiae* in this case in support of the respondents.

The consent of counsel for respondents and of counsel for the petitioners to file a brief *amici curiae* in behalf of the respondents has been obtained.

The movant, Laurelhurst United Presbyterian Church, Inc., defendant in the cause mentioned below, is a non-profit corporation in the State of Washington which holds legal title and has possession of real property and personalty, used by the congregation of the Laurelhurst United Presbyterian Church in Seattle, Washington (hereinafter referred to as the Laurelhurst Church). The individual movants, also defendants in the same case, are connected with the Laurelhurst Church in various official capacities.

All of said movants are defendants in an action in the Superior Court of the State of Washington for King County No. 691249 wherein the plaintiffs, Presbytery of Seattle, Inc., a non-profit Washington corporation, and William H. Goleeke, a member of the Laurelhurst United Presbyterian Church, represent-

ing all others similarly situated, seek to obtain legal title and possession of said realty and personalty now in the possession of the movants and which legal title to said realty and personalty is held by the movant Laurelhurst Church.

The movants are defending on the ground that the 1967 Confession of the United Presbyterian Church in the U.S.A. has effected substantial changes of doctrine in that church — changes to which the movants strongly object and which causes them to claim that the Presbytery of Seattle, Inc., representing the national body above, is not entitled to possession of the Laurelhurst Church property.

The case has been tried in the Superior Court of the State of Washington in Seattle and is now under advisement by the trial judge, the Honorable William J. Wilkins, who has informed Counsel that he will withhold decision until the Supreme Court of the United States rules in the instant case.

The movants are directly interested in the instant case before the United States Supreme Court because the petition for certiorari granted herein raises First Amendment and Fourteenth Amendment constitutional questions, also raised in the Seattle case mentioned above, involving the relationship between courts in the various jurisdictions in the United States and the property rights of members of religious societies. Since the Seattle trial judge in the local action wherein the movants are defendants has stated that he will withhold his decision pending the outcome in the instant case before this court, the movants have a special and direct interest in the application of the First and Fourteenth Amendments in the dispute now pending in the Seattle Superior Court.

The movants' dispute with the national body of the United Presbyterian Church in the U.S.A. will add a necessary dimension to the issues before this court. Instead of concern over the involvement of churches in secular events, as the petitioners herein suggest is the crux of their dispute, the movants are essentially concerned with the effect of fundamental and important changes in religious doctrine effected by the 1967 Confession of the United Presbyterian Church in the U.S.A. on the rights to property owned and possessed by the defendant congregation. This is an important and far-reaching question for religious societies affecting many churches situated similarly to the Laurelhurst Church, particularly in light of the ecumenical movement in the United States involving many religious denominations.

Movants have knowledge that many other congregations affiliated with the United Presbyterian Church in the U.S.A. take the same position as that taken by the Laurelhurst Church.

The movants believe that they can demonstrate that it is not a violation of the First Amendment freedom of religion and Fourteenth Amendment right of due process for courts to determine the rights of ownership, control and use of property held by religious societies where there have been clearly demonstrated, even admitted, changes in fundamental doctrine.

JURISDICTONAL QUERY

Parenthetically, we are unable to find that the Supreme Court of Georgia ruled on a federal question so as to give this court jurisdiction within the rule of the following cases:

In *McMillen v. Ferrum Mining Co.*, 197 U.S. 343, 347 (1905), this court said,

> ...This is obviously too late unless the court grants the rehearing and then proceeds to consider the question.

To the same effect:

Disconto Gesellschaft v. Umbreit, 208 U.S. 570 (1908);

Forbes v. State Council, 216 U.S. 396 (1910);

Paraiso v. U.S., 207 U.S. 368 (1907).

The main Georgia opinion does not pass on any federal question. Then there was merely a denial of a petition for rehearing and all questions raised therein. The rehearing was not *granted* as required by this court's decisions; and a federal question was not thereafter specifically considered and ruled on.

So it would appear the writ in this case was improvidently granted.

But if this court nevertheless takes jurisdiction, we direct attention to the attached Brief *Amici Curiae*.

WHEREFORE, it is respectfully prayed that this motion for leave to file a brief *amici curiae* be granted.

.....

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Attorney for the Movants.

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INTEREST OF AMICI CURIAE

As stated in the preceding motion, *the amici curiae* are all defendants in an action brought by the Presbystery of Seattle, Inc., a regional unit of the United Presbyterian Church in the U.S.A., to oust them from title and possession of the realty and personalty constituting the Laurelhurst United Presbyterian Church in Seattle. The congregation of the Laurelhurst Church in the fall of 1967 voted 183 to 11 to reject the doctrinal changes made in the historic presbyterian faith by the Confession of 1967 adopted by the General Assembly of the United Presbyterian Church in the U.S.A. in June of 1967, and voted to withdraw from the national body.

The three basic presbyterian documents for centuries have been: The Westminster Confession, the Larger Catechism and the Shorter Catechism.

The primary objections of the Laurelhurst Church to this new confession were the elimination of the Larger Catechism, the inclusion of other doctrinal statements not heretofore accepted, the change from a confessional to a non-confessional church, and changing the belief in the Bible as the Word of God to accepting the Bible as the inspired writings of men. The changes accomplished by the Confession of 1967 are fundamental changes, both demonstrable and in part admitted, in the historic belief and doctrine of the presbyterian faith.

Title to the property involved is held by a corporation, Laurelhurst United Presbyterian Church, Inc. The Articles of Incorporation state that property acquired is to be held for the object and purpose of the worship of Almighty God and to cause to be preached

and propagated the Gospel of Jesus Christ and the teachings of the Holy Spirit and particularly the belief and practice adhered to by the denomination known as the United Presbyterian Church of North America.

The United Presbyterian Church of North America merged in 1958 with the Presbyterian Church in the U.S.A. to form the United Presbyterian Church in the U.S.A., which at that time also adhered to the three basic presbyterian confessional documents.

A schism has occurred. The national body of the church has changed and in doing so has moved away from the historic and fundamental doctrines of the presbyterian faith. The *amici curiae* want to maintain their presbyterian faith in its historic form and retain the property they have heretofore used for this purpose, and which is dedicated to and held in trust for that purpose.

The action wherein the *amici curiae* are defendants was tried to the court who has taken the case under advisement. The Seattle trial judge informed counsel that he would await the outcome of the instant matter before making a ruling in the action before him. The *amici curiae* have an interest in the instant matter as they are similarly situated as the respondents herein and the outcome of the action that the *amici curiae* are defendants in may well be conclusively decided by the outcome of the instant action.

ARGUMENT

I. COURTS CAN ADJUDICATE PROPERTY RIGHTS OF RELIGIOUS SOCIETIES WHERE THERE HAS BEEN A CHANGE OF DOCTRINE.

Courts can adjudicate property rights of religious societies where there has been a change of doctrine. This principle is very old and has sanction in English decisions. *Attorney General v. Pearson,* 3 Merivale 353 (1817). This principle has also been recognized by this court in regards to property held in trust for the benefit of religious beliefs. *Watson v. Jones,* 13 Wall. 679 (1871).

This rule of law has also gained recognition and acceptance in a number of state courts. *Davis v. Scher,* 356 Mich. 291, 97 N.W. 2d 137 (1959); *Blauert v. Schupmann,* 241 Minn. 428, 63 N.W. 2d 578 (1954); 15 ALR 3d 297, 301.

In *Mills v. Yount,* Mo. „ 393 S.W. 2d 96, 100, 101 (1965), the Missouri court expressed several basic reasons for the rule. It said,

> But while the supreme judiciary of an organization has been said to be both legislative and judicial in respect to doctrinal matters within the basic faith of the church, we do not assent to the proposition that it can sit in solemn judgment to the exclusion of the civil courts as to its own acts (as affects civil and property rights), the effect of which such acts are a departure from the essential denominational faith, and a diversion to another, different, and repugnant one, and by this means carry the property of one faith over to the

other. See 45 Am. Jur. Religious Societies, § 68, p. 779; *Mt. Zion Baptist Church v. Whitmore,* 83 Iowa 138, 49 N.W. 81, 85, 13 L.R.A. 198; *Smith v. Pedigo, supra,* 145 Ind. 361, 44 N.E. 363, 366. For the right to religious freedom is not the right to steal churches. *Schnorr's Appeal,* 67 Penn. 138, 5 Am. Rep. 415, 418.

In *Trustees of Pencader Presbyterian Church v. Gibson,* 26 D. Ch. 375, 22 A. 2d 782, 789 (1941), after citing *Watson v. Jones,* 13 Wall. 679 (1891), the court said,

> And it may well be that the civil courts will interfere in a case where it is shown that the controlling authority of a General Church has indisputably abandoned fundamental and characteristic doctrines and beliefs to the diversion of church property from the objects and purposes of the implied trust to which it is subject. *Mack v. Kime,* 129 Ga. 1, 58 S.E. 184, 24 L.R.A., N.S., 675, 23 R.C.L., 449....

This is exactly the Seattle case.

II. ADJUDICATION OF PROPERTY RIGHTS DOES NOT VIOLATE THE FIRST OR FOURTEENTH AMENDMENTS

The adjudication of property rights by courts in the case of a change of doctrine does not in any way conflict with the First and Fourteenth Amendment rights of religious freedom. Property held by doctrinally oriented religious societies is held in trust either expressly or impliedly for the benefit of specific religious doctrines. A court determination of rights to property decides only those certain property rights. Such a determination does not decide who is right or wrong in their religious beliefs nor does it interfere

with the beliefs of anyone. Although ecclesiastical doctrine and belief must be presented in a determination of property rights where there is an allegation of a change in doctrine, it is introduced as evidence on the factual issue of whether a change in doctrine has in fact occurred.

This court has recognized an important distinction between the holding of religious beliefs and taking action motivated by religious beliefs. Under the First and Fourteenth Amendments there is absolute prohibition on state interference with religious beliefs or non-beliefs. *Braunfeld v. Brown,* 366 U.S. 599, 603 (1960). The Constitution requires that governmental action be "neutral in its relations with groups of religious believers and non-believers." *Everson v. Board of Education,* 330 U.S. 1 (1947); *Abington School District v. Schempp,* 374 U.S. 203 (1962). Such neutrality does not mean the state cannot act when there is just and proper cause for its action as between different groups of believers.

This court stated in *Braunfeld v. Brown,* 366 U.S. 599, 603 (1960):

> The freedom to act, even when the action is in accord with one's religious convictions, is not totally free from legislative restrictions. *Cantwell v. Connecticut, supra,* at pp. 303-304, 306. As pointed out in *Reynolds v. United States, supra,* at p. 164, legislative power over mere opinion is forbidden but it may reach people's actions when they are found to be in violation of important social duties or subversive of good order, even when the actions are demanded by one's religion. This was articulated by Thomas Jefferson when he said:
>
> Believing with you that religion is a matter

> which lies solely between man and his God, that he owes account to none other for his faith or his worship, that *the legislative powers of government reach actions only, and not opinions,* I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced *he has no natural right in opposition to his social duties.* (Emphasis added.) 8 Works of Thomas Jefferson 113.

> And, in the *Barnette* case, the Court was careful to point out that "The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. . . .

See *American Communications Ass'n. v. Douds,* 339 U.S. 382, 408 (1949) for further recognition by this court between holding beliefs and acting with regard to those beliefs.

In this case the freedom asserted by the petitioners brings them into conflict with the rights of others. The religious freedom asserted by the petitioners does not give them license to ignore the property rights of those who disagree with them, nor can the right of religious freedom be used as a barrier to a judicial determination of those rights.

CONCLUSION

The logical progression of petitioners' position would be for the courts to take no part whatsoever in religious property disputes, leaving those in actual control of the property all rights to the property, with no state action through its courts permissible to aid either party.

The *amici curiae* assert that when there is a clearly demonstrable and visible change in historic doctrines and beliefs perpetrated by the national body of the church, it no longer has a rightful claim to property held for and in behalf of those historic doctrines and beliefs. In the Seattle case the national body which has deliberately instituted substantial changes, both demonstrable and visible, nevertheless seeks to obtain the Laurelhurst church property. In this case the Laurelhurst church in Seattle is a defendant in possession.

If the courts cannot adjudicate religious property disputes, the law will leave the parties where it finds them. If the courts do have such a right, it would seem a necessary consequence that they can determine who shall have the property where there has been a substantial change of doctrine by a national church body.

Respectfully submitted,

.....

ALFRED J. SCHWEPPE
Attorney for Amici Curiae.

657 Colman Building
Seattle, Washington 98104

CERTIFICATE OF SERVICE

I, Alfred J. Schweppe, attorney for the above mentioned *amici curiae,* certify that I have this day served

Frank S. Cheatham, Jr.
32 East Bay Street
Savannah, Georgia 31401

and

Charles L. Gowan
434 Trust Company of Georgia Bldg.
Atlanta, Georgia 30303

attorneys for the respondents in the foregoing matter, and

Owen H. Page
305 - 307 Realty Building
Savannah, Georgia 31401

and

James E. Mc Aleer, Jr.
2105 E. 40th
Savannah, Georgia 31401

attorneys for the respondents in the foregoing matter, representing all the parties that are required to be served, each with a copy of this Motion for Leave to File a Brief Amici Curiae and a copy of the attached Brief Amici Curiae by depositing in the United States mail copies of same in properly addressed envelopes with adequate postage thereon.

Done this.....day of September, 1968.

.....

ALFRED J. SCHWEPPE
Attorney for Amici Curiae.

657 Colman Building
Seattle, Washington 98104